

THOMAS GERLACH and DIRK DRÖGE  
U.S. Patent Application S.N. 10/717,543

**R E M A R K S**

Reconsideration and allowance of the above-identified application is respectfully requested in view of the constructive Interview on January 10, 2006 and the amendment of the claims consistent with the indication of allowable subject matter in the outstanding Office Action.

It was noted the date of the Interview was indicated as January 6, 2006 instead of January 10, 2006. Correction of this error is requested as the Interview with substitute Examiner Sipos occurred on Tuesday, January 10, 2006 in view of the unavailability of Supervisory Examiner Rinaldi Rada.

Examiner Nathaniel C. Chukwurah is commended for his efforts in setting up this Interview. Efforts were made in the past to set up an Interview earlier but were impeded by the holidays and the extensive training schedule of Supervisory Examiner Rinaldi Rada.

Commended also is the Examiner's excellent search work on this application. It is believed the best prior art has been uncovered as well as cited from the counterpart German application and applied in this case. This action is appreciated along with the uncovering of Steinert, et al.

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Publication No. US 2003/0061700A1 and its citation for the first time in the final Office Action. Steinert '700 will be discussed again later.

Claim 1 has been amended to include the allowable subject matter of claim 21 as indicated on page 6 of the Office Action. More specifically claim 1 as amended includes the limitations of claim 21 as well as the clamping device of claim 17 and the clinchers of intervening claim 2.

The locking device variant of a clamping device was made a dependent claim as clamping and locking may have slightly different meanings. As will be recognized something may be clamped without the requirement of being locked. It is believed this difference in terminology is not the grounds for indicating allowability of the claims on page 6 of the Office Action. Claims 2-23 have been amended or canceled accordingly to claim the subject matter indicated allowable in the outstanding Office Action.

Claims 1, 3-16 and 18-20 and 22-23 are consequently deemed allowable which action is respectfully requested.

Independent claims 26 and 27 have been amended consistent with the subject matter indicated allowable in the last Office Action except for the substitution of the position sensor for

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the clamping device. The Applicants' position sensor is also novel and unobvious.

As pointed out in the Interview the position sensor of the Applicants' invention is patentably distinguishable from Steinert, et al. '700 since as correctly noted by the Examiner in the last Office Action Steinert, et al. '700 has a position sensor for registering the position of the product to be stapled.

In contrast the Applicants' position sensor is not a product position sensor. Applicants' position sensor as described in earlier presented claim 10 is to sense the relative position(s) of the stapling head and/or clincher. Thus Applicants' position sensor makes certain the stapling head and clinchers are in proper registry.

This novel and unobvious feature of the invention is not taught or suggested in Steinert, et al. '700. This novel aspect of the Applicants' invention was previously specifically claimed in claim 10 and is supported and apparent from paragraph 0025 on page 7 of the application as filed.

Applicants have amended dependent claim 10 back to the originally presented format. This amendment does not add new matter or present new issues since the claim was previously presented with the precise details of the Applicants' sensor.

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For the same reasons independent claims 26 and 27 do not raise new issues or new matter as they present the claims to the position sensor in the same format as previously presented in the dependent claim.

Given the fact the Applicants' position sensor is novel and unobvious claims 26 and 27 should be allowed. Moreover given the fact Steinert, et al. '700 was cited and applied for the first time in the final Office Action claims 26 and 27 should be allowed along with allowable claims 1, 3-16 and 18-20 and 22-23 or the final Office Action should be withdrawn as premature.

Claims 1, 3-16, 18-20, 22-23 and 26-27 are deemed in a condition for allowance which action is respectfully requested.

Respectfully submitted,

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